

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NATHAN BRINTON,

Plaintiff,

v.

VIVINT, INC., JOHN DOE 1-10,
INCLUSIVE,

Defendants.

Case No.

DEFENDANT VIVINT, INC.'S
NOTICE OF REMOVAL

Now comes Vivint, Inc. ("Vivint"), by and through counsel, and for its Notice of Removal of this action from the Superior Court of Washington for the County of Clark, to the United States District Court for the Western District of Washington, states:

1. Plaintiff Nathan Brinton ("Plaintiff") on November 6, 2023 served Vivint's statutory agent with a summons and Complaint (Pursuant to 28 U.S.C. §1446(a)), to be filed in the Superior Court of Washington for the County of Clark. Copies of the Summons and Complaint are attached hereto as **Exhibit A**. Plaintiff's Complaint alleges damages against Vivint, Inc. and John Does 1-10 for alleged violations of Fla. Stat. § 668.603, Cal. Bus. & Prof. Code § 17529.5, and the Washington Consumer Protection Act ("CPA"), RCW 19.86, *et seq.* related to Plaintiff's receipt of "spam" emails.

2. This removal is timely because Vivint was served with Plaintiff's Complaint not more than 30 days ago. 28 U.S.C. § 1446.

DEFENDANT VIVINT, INC.'S NOTICE OF REMOVAL - 1

1 3. Complete diversity of citizenship is present in this action, as demonstrated by the
2 following:

3 a. Plaintiff is currently and was at all relevant times (including at the time of filing the
4 Complaint) a citizen of Clark County, Washington.

5 b. Vivint is a Utah corporation with its principal place of business located in Provo,
6 Utah and thus is a citizen of Utah for purposes of diversity jurisdiction.

7 c. Plaintiff does not allege the citizenship of John Does 1-10, though he alleges that
8 emails may have been sent from Florida and/or California. Fictitious defendants are not
9 considered for purposes of complete diversity in the removal context. 28 U.S.C. §
10 1441(b)(1).

11 4. Accordingly, Plaintiff's action is one over which this Court has diversity
12 jurisdiction under the provisions of 28 U.S.C. §1332(a)(1) and is one that may be removed to this
13 Court by Vivint pursuant to the provisions of 28 U.S.C. §1441 because it is an action between
14 citizens of different states.

15 5. Plaintiff's Complaint does not set forth a specific amount of damages claimed
16 against Vivint, however Plaintiff has stipulated that the amount in controversy exceeds \$75,000,
17 and he intends to prove and seek damages exceeding this amount. (Email correspondence dated
18 11/21/23, attached as **Exhibit B**).

19 6. Thus, this Court has subject matter jurisdiction over this action pursuant to 28
20 U.S.C. § 1441 and 28 U.S.C., § 1332, in that there is complete diversity of citizenship amongst the
21 parties, and because the amount in controversy is satisfied.

22 7. As required by 28 U.S.C. §1446(b), Defendant is filing this Notice of Removal
23 within thirty days of Defendant first learning that the criteria for removal had been met. Defendant
24 is contemporaneously serving a copy of this Notice upon all parties and, if necessary, the Clerk of
25 the Clark Superior Court, with instructions to proceed no further unless and until this case is
26 remanded.

DEFENDANT VIVINT, INC.'S NOTICE OF REMOVAL - 2

1 This lawsuit is, therefore, a civil action over which this Court has original jurisdiction under
2 28 U.S.C. §1332 and is one which may be removed to this Court under 28 U.S.C. §§ 1441 and
3 1446. Further, removal to this judicial district and division is proper under 28 U.S.C. § 1441(a),
4 as this District and Division embraces Clark County, Washington, the venue identified in
5 Plaintiff's unfiled Complaint.

6 WHEREFORE, Vivint, Inc. hereby removes this case to the U.S. District Court for the
7 Western District of Washington.

8 DATED: December 1, 2023

STOEL RIVES LLP

9
10 /s/ Anne M. Dorshimer

11 ANNE M. DORSHIMER, WSBA 50363

anne.dorshimer@stoel.com

12 Stoel Rives LLP

600 University Street, Suite 3600

13 Seattle, WA 98101

Telephone: 206.624.0900

14 Facsimile: 206.386.7500

15 *Attorneys for Defendant Vivint, Inc.*
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2023, I caused a true and correct copy of the foregoing document to be e-filed with the court's CM/ECF system and served on the individual listed below via U.S. Mail, postage prepaid and email on:

Nathan Brinton
31606 NE 134th Ct.
Battle Ground, WA 98604
brintonnathan@gmail.com
Pro Se Plaintiff

Dated December 1, 2023.

/s/ Anne Dorshimer
Attorney For Defendant, Vivint, Inc.